

Attachment C Updates

Public Defender Commission Meeting

Following is a summary of Mental Health Protocol issues needing clarification/specification and includes providers' submitted input.

Fee

Feedback

1. Initial feedback in the July 2007 letter to the commission
 - a. Increase fee
 - b. Look at difference between forensic and neuro-psych forensic work
2. No additional feedback provided until October 2007
 - a. Reportedly, several psychologists will not continue to work with the OPD at the currently set rate
 - b. Rate to increase but no specific rate was provided
 - i. Rates of \$120 and up (e.g. \$190.00 neuropsychological) are charged by several psychologists

Testifying

Issues to consider with testifying

1. Travel time= which is indicated in the protocol to be reimbursed at 50% the standard Protocol rate for the expert
2. Wait time= time actually in the courthouse waiting to testify
3. Testifying= in the courtroom, testifying (or being requested to listen to others testify as to glean knowledge for testifying or if/when recalled to the stand)
4. Rate for this service= break it down by the hour (for which the standard is a higher rate than for screenings/evaluations) or flat rate for service.

Feedback

Comment: Expert has to arrange his/her schedule on the assumption he/she will "be there all morning, and therefore can't schedule any patients or other revenue generating activity."

1. Pay at same rate per hour
 - a. Including travel time
 - b. Per diem separately as needed
2. Pay at a higher rate per hour (this is the standard practice in the industry)
 - a. Including travel time and wait time
 - b. Per diem separately as needed
 - c. \$175 hour for all testimony work, including pretrial interviews with attorneys, travel, wait time, etc.
3. Use time blocks (1/2 day, full day)
 - a. Including travel time
 - b. Per diem separately as needed
 - c. \$600/\$1200; \$1800/\$3000

Sex Offender (SO) Evaluations

Being consistent with like wages for like work, sex offender evaluations (which are to include a risk assessment) are determined or guided by statute. MCA 46-18-111 indicates that SO evaluations are

to be provided by a member of MSOTA or by someone who has comparable credentials acceptable to the department of labor and industry. It is reasonable, therefore, to charge a flat rate for SO evaluations.

Feedback

1. Total cost of \$1250.00 to \$1500.00 (including the risk assessment) depending on the history, travel, and specifics of the case.
 - a. SO evaluations (and the fee/pre-approved cost) includes a risk assessment
 - b. Travel and Per diem for the purpose of the evaluation included in total cost

Chemical Dependency (CD) Evaluations

Charge a flat fee of \$300.00 for a standard, comprehensive CD evaluation.

No Show (NS) Policy/Rate

Feedback

1. Set a rate of payment
 - a. Pay for one hour seems reasonable
 - b. Pay for 90 minutes at regular Protocol Rate
 - c. Charge for time blocked out for the client
 - i. If known history or suspect that client may not show, schedule shorter time period for the initial evaluation (e.g. 2 or 4 hours)
2. Not much of an issue (e.g. client in jail)
3. Not OPD's fault client does not show

Computer Generated Fee

1. Pay the actual cost for the report/scoring service
 - a. If the test is sent out to be scored, cover the actual cost of that.
2. One person indicated: If the patient sits in our office for an hour answering the MMPI, we should be paid for an hour.

In addition:

3. Pay per hour (at set rate) for interpretation even if computer generated scores/report

Travel

Feedback

1. Fine with ½ pay for travel time
2. Same hourly for travel time (majority of responses)
3. Per Diem as needed (most don't charge per diem—it is assumed into the hourly cost for travel)

General Comments

- Forensic work is a National market rate not regional rate
- Example \$300.00 for Forensic, \$190 for clinical rates per hour

The other changes/comments that we need to add for the Commission to consider are:

1. Put back into Attachment C, under the Screening section= LCPC \$75.00/hr and per item fee for costs of diagnostic tools.
2. Recommend changing "Expert" to "Mental Health Professional" throughout the Protocol.
3. NBCC requested they be added as a referral source in the Protocol. They could be added to the Reference page of the Protocol.
4. I will get feedback from the Montana Board of Psychologists about the Protocol after their November 27 meeting.

Note

Commission adoptions need to be documented and the MOU updated accordingly (e.g. amendment to be added to previously submitted MOUs).

Richard A. Goldberg and Associates
Attorneys and Counselors at Law

170 Scotch Road, Ewing, NJ 08628-2507

tel 609.538.1900 fax 609.538.8338

6 November 2007

VIA FAX TRANSMISSION
AND REGULAR MAIL.

CONFIDENTIAL/PRIVILEGED
ATTORNEY-CLIENT COMMUNICATION

Mr. Harry Freebourn, Administrative Director
Montana Office of the Public Defender
Montana Public Defender Commission
44 West Park Street
Butte, MT 59701

Re: Montana Public Defender Commission/Fee Schedule Modification/Public Records
Request.
File No.: NBCC-352

Dear Mr. Freebourn:

I am writing to thank you for, and to confirm, the information that you provided concerning the above-referenced matter during our conversation on Friday.

Specifically, it is my understanding that you have reviewed the 31 October 2007 correspondence from our client, the National Board for Certified Counselors, Inc. (NBCC), by NBCC President/CEO Dr. Thomas Clawson. These letters from Dr. Clawson present NBCC's objections concerning recent modifications to the Montana Public Defender Commission (Commission) Mental Health Expert Cost/Fee Schedule, which apparently may exclude licensed Montana counselors from receiving professional fees for various services previously reimbursed, including the administration of diagnostic tools and mental health-related tests. In addition, Dr. Clawson has submitted a public records request for information and materials from the Commission, pursuant to the Montana Constitution and State Open Records Law.

Based on our discussion, it is my further understanding that you have concluded that any exclusion of licensed counselors from the Commission Fee Schedule was an inadvertent, administrative oversight, and that these professionals should again be entitled to appropriate fees for all services, as are licensed psychologists and social workers. You will be recommending this change to the Commission at its next meeting, this coming Friday, and asking for an approval vote at that time.

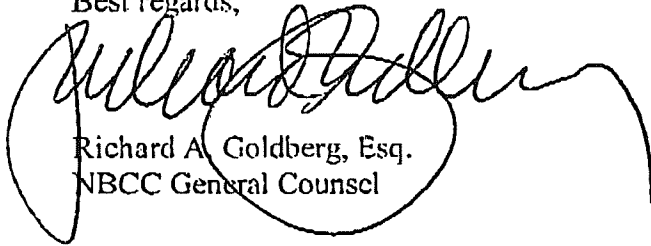
Harry Freebourn, Administrative Director
Montana Office of the Public Defender
6 November 2007

Page 2

In light of this information, and the new circumstances, NBCC can confirm that the Commission may postpone its response to our public records requests until next week, when we receive notice of the indicated change to the Commission Fee Schedule. In the interim, please feel free to contact me or Jennifer Lane, Esq., of my firm at your convenience if you would like to discuss any aspect of this matter.

Again, I greatly appreciate your assistance with respect to this matter, which will serve the interests of the Montana professional counselor community and the public at large.

Best regards,

A handwritten signature in black ink, appearing to read "Richard A. Goldberg", is written over a circular stamp. The signature is fluid and cursive.

Richard A. Goldberg, Esq.
NBCC General Counsel

cc: Thomas W. Clawson, President and CEO, NBCC



October 31, 2007

VIA FAX TRANSMISSION, EMAIL
AND REGULAR MAIL

Ms. Cathy Doyle
Montana Public Defender Commission
Office of the Public Defender
44 West Park Street
Butte, Montana 59701

Re: Public Records Request.

Dear Ms. Doyle;

Pursuant to Montana State law governing access to public records, including Montana Constitution Article 2, Section 9 and Montana Code Sections 2-6-101 et seq. (Open Records Law), the National Board for Certified Counselors, Inc., (NBCC) hereby requests information and materials pertaining to the Montana Public Defender Commission (Commission) billing and fee schedule for mental health professionals performing evaluation and consultation services (Fee Schedule) for the Office of the Public Defender (OPD). Specifically, we are seeking all documents, correspondence, minutes, policies, procedures, memoranda, guidelines, communications, and all other materials that relate to, or were generated during, the Commission's development of its new, proposed Fee Schedule, as well as all related communications between the Commission and legislators, testing firms, government agencies, and other agencies or professional organizations.

Further, we are requesting the Commission's written justification for the apparent decision to exclude licensed clinical professional counselors (LCPCs) from any reimbursement for specialized testing services identified as "diagnostic tools," as indicated in the OPD Notice, Attachment C titled "Estimated Cost Schedule." In this regard, please note that by letter dated October 31, 2007, the NBCC submitted written objections to the proposed Commission Fee Schedule, and provided the reasons for such objections. We therefore request the Commission's written justification.

Concerning this public records request, NBCC specifically seeks the following information and all related documents:

1. The criteria used for developing and determining the proposed Fee Schedule.
2. The names, titles, degrees, and current work settings of all individuals and personnel who prepared, considered, determined, and/or adopted the proposed Fee Schedule.

3. The dates and minutes of all meetings of the Commission and any other body or group that participated in the preparation, consideration, and/or adoption of the proposed Fee Schedule.
4. A complete list of all resources used to determine the proposed Fee Schedule, including, but not limited to, all professional publications and other references, and any original research.

In light of the significant, negative effect of the proposed Fee Schedule on many Montana licensed counseling professionals, we also are requesting that the Commission postpone any final adoption and implementation of the Fee Schedule for at least one hundred twenty (120) days. This delay should provide the Commission with time to respond fully to these requests, and allow NBCC to analyze the responsive information and documents.

Finally, please note that, to the fullest extent possible, the Commission's response to this Constitutional and Open Records Law request should be provided in electronic format. If copying fees are required for materials in printed format alone, please indicate the cost, at your earliest convenience, and the necessary payment will be forwarded. We are willing to pay the statutorily permitted cost of this request, but respectfully ask that such charges be waived in the public interest. We request that all requested information be provided before any final approval of the Fee Schedule rule in question is made, and we appreciate your timely response to this information and document request.

Thank you for your anticipated cooperation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. W. Clawson", with a long horizontal flourish extending to the right.

Thomas W. Clawson, Ed.D., NCC, NCSC, LPC
President and CEO, NBCC



October 30, 2007

Montana Public Defender Commission
44 West Park Street
Butte, Montana 59701
Attn: Cathy Doyle

RE: Proposed Office of the State Public Defender Fee Schedule

Ms. Doyle,

On behalf of the National Board for Certified Counselors (NBCC), I am writing you to express concern about the proposed fee schedule for testing services.

Based upon our review of the proposed schedule, it appears that the Public Defenders Commission will no longer reimburse Montana's licensed clinical professional counselors (LCPCs) for providing specialized testing services. This move is not only discriminatory, but it will severely limit the number of qualified professionals who can provide these services in your state. LCPCs are allowed in Montana regulations to conduct assessments. Specifically, 37-23-102 (b) states "assessment, which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, abilities, achievement, interests, and personal characteristics. . ." LCPCs are qualified to provide these services, and they should not be excluded on the basis of their professional identity. We believe that professional identity should not be a determining factor in these decisions. Rather, training and experience with testing instruments are the most critical measures of competency. As a profession regulated by the state, LCPCs, which number 927 in Montana, are required to provide services only for which they have training and experience. Montana citizens deserve the right to select from the complete list of professionals who provide quality mental health services including those in rural and traditionally underserved areas.

NBCC is well versed in the qualifications of LCPCs as our organization is responsible for the examinations that counselors are required to pass in order to become licensed. Furthermore, NBCC is the largest certification agency for professional counselors in the United States, certifying more than 42,000 practitioners, living and working in the U.S. and over 40 countries. Incorporated in 1982 to establish and monitor a national certification system and to identify those master's level counselors who have voluntarily sought and obtained certification, NBCC continues to develop rigorous certifications and quality professional services which serve the counseling profession and society as a whole.

I appreciate your consideration of these concerns. If I can offer additional assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Clawson", with a long horizontal flourish extending to the right.

Thomas W. Clawson, Ed.D., NCC, NCSC, LPC
President and CEO



FACT

The National FAIR ACCESS COALITION ON TESTING

336-547-0607 (Phone) • 7 Terrace Way, Suite A, Greensboro, NC 27403 • 336-547-0017 (Fax)

www.fairaccess.org

October 30, 2007

Montana Public Defender Commission
44 West Park Street
Butte, Montana 59701
Attn: Cathy Doyle

RE: Proposed Billing and Fee Schedule for Mental Health Professionals Performing
Evaluation and Consultation Services for the Office of the State Public Defender

Ms. Doyle,

On behalf of the Fair Access Coalition on Testing (FACT), I am contacting you about the above referenced matter. FACT is a coalition of testing professionals that advocates for fair access for appropriate professionals to administer and interpret psychological tests based on proven competencies. FACT consists of state and national organizational members as well as individuals. The National Board for Certified Counselors and the American Counseling Association are two counseling organizational members of FACT. FACT represents a diverse population of testing professionals who are dedicated to the access to qualified test professionals who provide mental health services. Information about this proposed fee schedule was forwarded by one of our members concerned about this proposal.

After reviewing the proposed changes, it appears that the Public Defenders Commission is proposing a fee schedule which would not provide reimbursement rate for specialized testing services provided by licensed clinical professional counselors (LCPCs). There are LCPCs who are qualified to provide these services, and they should not be excluded on the basis of their professional identity. Training and experience with instruments are the most critical measures of competency in providing testing services. LCPCs, like psychologists, are regulated and authorized by state licensing boards. In Montana, the Department of Labor and Industry Board of Social Work Examiners and Professional Counselors Department of Commerce Professional & Occupational Licensing Division regulates both counselors and social workers. Furthermore, they are required to provide services only for which they have training and experience.

We implore your reconsideration and offer our assistance as you consider policies regarding screening and testing services.

Regards,

Wendi K. Schweiger, M.S./Ed.S., NCC, LPC
Chair